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No. 87-965

In The
Supreme Court of the United States
October Term, 1987

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CITY OF SAN ANTONIO,

Petitioner,

vs.

JEAN ROSOW,

Respondent.

—o—

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

—o—

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Respondent (Brief, p. 7) says that "the Petitioner claims, for the first time in this Court, that the burden was upon Respondent to obtain a finding that the due process violations were a cause in fact of her damages. For this proposition Petitioner cites *Carey vs. Piphus,* 435 U.S. 247, 55 L.Ed.2d 252, 98 S.Ct. 1042 (1978)".

It is not correct that this claim was made for the first time in this Court. It was made in the State Supreme Court at pp. 17-18 of Petitioner's Response to Application for Writ of Error and it was made in the Court of Appeals at pp. 4-5 of Appellant's Reply to Appellee's Post-Submission Brief.

Furthermore this "claim" is correct. All of Respondent's evidence on *damages* consisted of her testimony and that of her husband about her mental distress at *losing her job*—at being *fired*—and not about her distress, if any, about not getting a hearing before Huebner (which, of course, was the procedural due process defect relied upon).

If the Petitioner is correct that there was substantial evidence to support Huebner's firing Respondent then her firing was justified and the Petitioner, of course, is not liable for the matters about which she and her husband testified, which matters did not relate to denial of procedural process.

Respondent states on page 8 of her brief that "Petitioner stipulated that Respondent's actual damages amounted to $131,581.66." What Petitioner in fact stipulated to was that Respondent's loss of earnings together with pre-judgment interest and other items over the five (5) year period from her firing to the time of trial was the above amount. This is hardly a stipulation of liability for either substantive or procedural due process denial.

The case resolves itself to this: There was justification for Huebner's firing Respondent, but his failure to give her a hearing violated her procedural due process rights. However, all of the damage evidence, including

that stipulated, related to her having been fired. It did not relate to the procedural due process violation. There was no evidence bearing upon the question of what, if any, damage she sustained from the violation.

Petitioner submits that the only damage Respondent *could* have sustained (in light of her own testimony and that of her husband) from this latter violation was that such violation *caused her to be fired.* Under *Carey vs. Piphus, supra,* she had to prove her damages and there is no proof by her of the causal connection, if any, between the procedural violation and her damage. In fact, the evidence indicated rather forcefully that a hearing before Huebner, at which Canales and Campbell testified, would have sealed her doom—judicially as well as administratively.

Respectfully submitted,

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